

1 James P. McDonald
 2 Jacqueline M. Moessner
 3 Admitted pursuant to LR IA 11-3
 4 Securities and Exchange Commission
 5 1961 Stout Street, Suite 1700
 6 Denver, Colorado 80294
 7 (303) 844-1000
 8 mcdonaldja@sec.gov
 9 moessnerj@sec.gov

10
 11 *Counsel for Plaintiff Securities and Exchange Commission*

12
 13
 14
 15
 16
 17
**UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA**

18
 19
 20
 21
 22
 23
 UNITED STATES SECURITIES AND
 EXCHANGE COMMISSION,

24
 25
 26
 Plaintiff,

27
 v.

28
 29
 30
 31
 32
 33
 34
 35
 36
 37
 38
 39
 40
 41
 42
 43
 44
 45
 46
 47
 48
 49
 50
 51
 52
 53
 54
 55
 56
 57
 58
 59
 60
 61
 62
 63
 64
 65
 66
 67
 68
 69
 70
 71
 72
 73
 74
 75
 76
 77
 78
 79
 80
 81
 82
 83
 84
 85
 86
 87
 88
 89
 90
 91
 92
 93
 94
 95
 96
 97
 98
 99
 100
 101
 102
 103
 104
 105
 106
 107
 108
 109
 110
 111
 112
 113
 114
 115
 116
 117
 118
 119
 120
 121
 122
 123
 124
 125
 126
 127
 128
 129
 130
 131
 132
 133
 134
 135
 136
 137
 138
 139
 140
 141
 142
 143
 144
 145
 146
 147
 148
 149
 150
 151
 152
 153
 154
 155
 156
 157
 158
 159
 160
 161
 162
 163
 164
 165
 166
 167
 168
 169
 170
 171
 172
 173
 174
 175
 176
 177
 178
 179
 180
 181
 182
 183
 184
 185
 186
 187
 188
 189
 190
 191
 192
 193
 194
 195
 196
 197
 198
 199
 200
 201
 202
 203
 204
 205
 206
 207
 208
 209
 210
 211
 212
 213
 214
 215
 216
 217
 218
 219
 220
 221
 222
 223
 224
 225
 226
 227
 228
 229
 230
 231
 232
 233
 234
 235
 236
 237
 238
 239
 240
 241
 242
 243
 244
 245
 246
 247
 248
 249
 250
 251
 252
 253
 254
 255
 256
 257
 258
 259
 260
 261
 262
 263
 264
 265
 266
 267
 268
 269
 270
 271
 272
 273
 274
 275
 276
 277
 278
 279
 280
 281
 282
 283
 284
 285
 286
 287
 288
 289
 290
 291
 292
 293
 294
 295
 296
 297
 298
 299
 300
 301
 302
 303
 304
 305
 306
 307
 308
 309
 310
 311
 312
 313
 314
 315
 316
 317
 318
 319
 320
 321
 322
 323
 324
 325
 326
 327
 328
 329
 330
 331
 332
 333
 334
 335
 336
 337
 338
 339
 340
 341
 342
 343
 344
 345
 346
 347
 348
 349
 350
 351
 352
 353
 354
 355
 356
 357
 358
 359
 360
 361
 362
 363
 364
 365
 366
 367
 368
 369
 370
 371
 372
 373
 374
 375
 376
 377
 378
 379
 380
 381
 382
 383
 384
 385
 386
 387
 388
 389
 390
 391
 392
 393
 394
 395
 396
 397
 398
 399
 400
 401
 402
 403
 404
 405
 406
 407
 408
 409
 410
 411
 412
 413
 414
 415
 416
 417
 418
 419
 420
 421
 422
 423
 424
 425
 426
 427
 428
 429
 430
 431
 432
 433
 434
 435
 436
 437
 438
 439
 440
 441
 442
 443
 444
 445
 446
 447
 448
 449
 450
 451
 452
 453
 454
 455
 456
 457
 458
 459
 460
 461
 462
 463
 464
 465
 466
 467
 468
 469
 470
 471
 472
 473
 474
 475
 476
 477
 478
 479
 480
 481
 482
 483
 484
 485
 486
 487
 488
 489
 490
 491
 492
 493
 494
 495
 496
 497
 498
 499
 500
 501
 502
 503
 504
 505
 506
 507
 508
 509
 510
 511
 512
 513
 514
 515
 516
 517
 518
 519
 520
 521
 522
 523
 524
 525
 526
 527
 528
 529
 530
 531
 532
 533
 534
 535
 536
 537
 538
 539
 540
 541
 542
 543
 544
 545
 546
 547
 548
 549
 550
 551
 552
 553
 554
 555
 556
 557
 558
 559
 560
 561
 562
 563
 564
 565
 566
 567
 568
 569
 570
 571
 572
 573
 574
 575
 576
 577
 578
 579
 580
 581
 582
 583
 584
 585
 586
 587
 588
 589
 590
 591
 592
 593
 594
 595
 596
 597
 598
 599
 600
 601
 602
 603
 604
 605
 606
 607
 608
 609
 610
 611
 612
 613
 614
 615
 616
 617
 618
 619
 620
 621
 622
 623
 624
 625
 626
 627
 628
 629
 630
 631
 632
 633
 634
 635
 636
 637
 638
 639
 640
 641
 642
 643
 644
 645
 646
 647
 648
 649
 650
 651
 652
 653
 654
 655
 656
 657
 658
 659
 660
 661
 662
 663
 664
 665
 666
 667
 668
 669
 670
 671
 672
 673
 674
 675
 676
 677
 678
 679
 680
 681
 682
 683
 684
 685
 686
 687
 688
 689
 690
 691
 692
 693
 694
 695
 696
 697
 698
 699
 700
 701
 702
 703
 704
 705
 706
 707
 708
 709
 710
 711
 712
 713
 714
 715
 716
 717
 718
 719
 720
 721
 722
 723
 724
 725
 726
 727
 728
 729
 730
 731
 732
 733
 734
 735
 736
 737
 738
 739
 740
 741
 742
 743
 744
 745
 746
 747
 748
 749
 750
 751
 752
 753
 754
 755
 756
 757
 758
 759
 760
 761
 762
 763
 764
 765
 766
 767
 768
 769
 770
 771
 772
 773
 774
 775
 776
 777
 778
 779
 780
 781
 782
 783
 784
 785
 786
 787
 788
 789
 790
 791
 792
 793
 794
 795
 796
 797
 798
 799
 800
 801
 802
 803
 804
 805
 806
 807
 808
 809
 8010
 8011
 8012
 8013
 8014
 8015
 8016
 8017
 8018
 8019
 8020
 8021
 8022
 8023
 8024
 8025
 8026
 8027
 8028
 8029
 8030
 8031
 8032
 8033
 8034
 8035
 8036
 8037
 8038
 8039
 8040
 8041
 8042
 8043
 8044
 8045
 8046
 8047
 8048
 8049
 8050
 8051
 8052
 8053
 8054
 8055
 8056
 8057
 8058
 8059
 8060
 8061
 8062
 8063
 8064
 8065
 8066
 8067
 8068
 8069
 8070
 8071
 8072
 8073
 8074
 8075
 8076
 8077
 8078
 8079
 8080
 8081
 8082
 8083
 8084
 8085
 8086
 8087
 8088
 8089
 8090
 8091
 8092
 8093
 8094
 8095
 8096
 8097
 8098
 8099
 80100
 80101
 80102
 80103
 80104
 80105
 80106
 80107
 80108
 80109
 80110
 80111
 80112
 80113
 80114
 80115
 80116
 80117
 80118
 80119
 80120
 80121
 80122
 80123
 80124
 80125
 80126
 80127
 80128
 80129
 80130
 80131
 80132
 80133
 80134
 80135
 80136
 80137
 80138
 80139
 80140
 80141
 80142
 80143
 80144
 80145
 80146
 80147
 80148
 80149
 80150
 80151
 80152
 80153
 80154
 80155
 80156
 80157
 80158
 80159
 80160
 80161
 80162
 80163
 80164
 80165
 80166
 80167
 80168
 80169
 80170
 80171
 80172
 80173
 80174
 80175
 80176
 80177
 80178
 80179
 80180
 80181
 80182
 80183
 80184
 80185
 80186
 80187
 80188
 80189
 80190
 80191
 80192
 80193
 80194
 80195
 80196
 80197
 80198
 80199
 80200
 80201
 80202
 80203
 80204
 80205
 80206
 80207
 80208
 80209
 80210
 80211
 80212
 80213
 80214
 80215
 80216
 80217
 80218
 80219
 80220
 80221
 80222
 80223
 80224
 80225
 80226
 80227
 80228
 80229
 80230
 80231
 80232
 80233
 80234
 80235
 80236
 80237
 80238
 80239
 80240
 80241
 80242
 80243
 80244
 80245
 80246
 80247
 80248
 80249
 80250
 80251
 80252
 80253
 80254
 80255
 80256
 80257
 80258
 80259
 80260
 80261
 80262
 80263
 80264
 80265
 80266
 80267
 80268
 80269
 80270
 80271
 80272
 80273
 80274
 80275
 80276
 80277
 80278
 80279
 80280
 80281
 80282
 80283
 80284
 80285
 80286
 80287
 80288
 80289
 80290
 80291
 80292
 80293
 80294
 80295
 80296
 80297
 80298
 80299
 80300
 80301
 80302
 80303
 80304
 80305
 80306
 80307
 80308
 80309
 80310
 80311
 80312
 80313
 80314
 80315
 80316
 80317
 80318
 80319
 80320
 80321
 80322
 80323
 80324
 80325
 80326
 80327
 80328
 80329
 80330
 80331
 80332
 80333
 80334
 80335
 80336
 80337
 80338
 80339
 80340
 80341
 80342
 80343
 80344
 80345
 80346
 80347
 80348
 80349
 80350
 80351
 80352
 80353
 80354
 80355
 80356
 80357
 80358
 80359
 80360
 80361
 80362
 80363
 80364
 80365
 80366
 80367
 80368
 80369
 80370
 80371
 80372
 80373
 80374
 80375
 80376
 80377
 80378
 80379
 80380
 80381
 80382
 80383
 80384
 80385
 80386
 80387
 80388
 80389
 80390
 80391
 80392
 80393
 80394
 80395
 80396
 80397
 80398
 80399
 80400
 80401
 80402
 80403
 80404
 80405
 80406
 80407
 80408
 80409
 80410
 80411
 80412
 80413
 80414
 80415
 80416
 80417
 80418
 80419
 80420
 80421
 80422
 80423
 80424
 80425
 80426
 80427
 80428
 80429
 80430
 80431
 80432
 80433
 80434
 80435
 80436
 80437
 80438
 80439
 80440
 80441
 80442
 80443
 80444
 80445
 80446
 80447
 80448
 80449
 80450
 80451
 80452
 80453
 80454
 80455
 80456
 80457
 80458
 80459
 80460
 80461
 80462
 80463
 80464
 80465
 80466
 80467
 80468
 80469
 80470
 80471
 80472
 80473
 80474
 80475
 80476
 80477
 80478
 80479
 80480
 80481
 80482
 80483
 80484
 80485
 80486
 80487
 80488
 80489
 80490
 80491
 80492
 80493
 80494
 80495
 80496
 80497
 80498
 80499
 80500
 80501
 80502
 80503
 80504
 80505
 80506
 80507
 80508
 80509
 80510
 80511
 80512
 80513
 80514
 80515
 80516
 80517
 80518
 80519
 80520
 80521
 80522
 80523
 80524
 80525
 80526
 80527
 80528
 80529
 80530
 80531
 80532
 80533
 80534
 80535
 80536
 80537
 80538
 80539
 80540
 80541
 80542
 80543
 80544
 80545
 80546
 80547
 80548
 80549
 80550
 80551
 80552
 80553
 80554
 80555
 80556
 80557
 80558
 80559
 80560
 80561
 80562
 80563
 80564
 80565
 80566
 80567
 80568
 80569
 80570
 80571
 80572
 80573
 80574
 80575
 80576
 80577
 80578
 80579
 80580
 80581
 80582
 80583
 80584
 80585
 80586
 80587
 80588
 80589
 80590
 80591
 80592
 80593
 80594
 80595
 80596
 80597
 80598
 80599
 80600
 80601
 80602
 80603
 80604
 80605
 80606
 80607
 80608
 80609
 80610
 80611
 80612
 80613
 80614
 80615
 80616
 80617
 80618
 80619
 80620
 80621
 80622

1 matter in light of another proceeding (ECF No. 14). On October 19, 2022, Defendant Doubek, who
 2 is proceeding *pro se*, separately moved to dismiss on the ground that other parties should be joined
 3 or to join those parties (ECF No. 17). The Court heard Defendants' motions on August 15, 2023,
 4 and, for the reasons stated at the hearing, denied them (ECF No. 39).

5 On September 15, 2023, the Court entered a Stipulated Discovery Plan and Scheduling
 6 Order ("Scheduling Order") (ECF No. 41). Defendants filed answers on October 16 and 20, 2023,
 7 (ECF Nos. 48, 50). The Scheduling Order was amended several times on the parties' motions, and
 8 discovery concluded on August 27, 2024 (ECF Nos. 63, 66, 73, 76).

9 The SEC filed a motion for summary judgment on October 10, 2024 (ECF No. 81);
 10 Defendants Alpine and Walsh filed a motion for partial summary judgment on October 18, 2024
 11 (ECF No. 87). Those summary judgment motions have been fully briefed, and the Court has set a
 12 hearing for May 28, 2025 (ECF No. 100). Defendant Doubek did not file a motion for summary
 13 judgment or respond to either motion for summary judgment.

14 Argument

15 **A. The Motion is Duplicative of Defendant Doubek's Prior Motion to Dismiss that the 16 Court Properly Denied.**

17 The Motion is duplicative of Defendant Doubek's prior Motion to Dismiss, filed on October
 18 19, 2022 (ECF No. 17). The crux of both motions is that Mr. Doubek believes that another
 19 individual, John Hurry, should be a defendant in this lawsuit. Although Mr. Doubek refers to other
 20 tribunals' more recent determinations involving Mr. Hurry, those facts are not newly discovered,
 21 and they do not change the legal issues in this SEC enforcement action, nor change the Court's prior
 22 analysis regarding whether Mr. Hurry is required to be joined in this matter. That issue was
 23 specifically raised in the previous motion to dismiss, argued at the hearing, and rejected by this
 24 Court. *See* August 15, 2023 Motions Hearing Transcript at 35:23-40:19 and Minute Order Denying
 25 Motions to Dismiss (ECF No. 39).

26 As previously argued by the SEC, and as accepted by the Court, Mr. Doubek's contention
 27 that Mr. Hurry was ultimately responsible for, or played a role in, the acts alleged in the SEC's
 28 Complaint does not warrant dismissal of this action as to Mr. Doubek (*see* ECF No. 19). As further

1 explained in the SEC’s Opposition to Mr. Doubek’s previous motion to dismiss,

2 An agency’s decision to bring or not to bring an enforcement action against a person
 3 or entity is ‘presumed immune from judicial review.’ *Heckler v. Chaney*, 470 U.S.
 4 821, 831 (1985).² Accordingly, ‘courts have generally concluded that defendants
 5 cannot employ Rule 19 to force the SEC to sue other parties or face dismissal in
 enforcement actions.’ *Norstra Energy Inc.*, 2016 WL 4530893, at *1 (collecting
 cases).³

6 ECF No. 19 at 2 (footnote in original). As the SEC has previously shown, and as remains true now,
 7 Mr. Hurry is not a ““required party” under Rule 19 such that the Complaint should be dismissed for
 8 ‘failure to join a party under Rule 19,’ Fed. R. Civ. P. 12(b)(7)³ (ECF No. 19 at 2). It is still the
 9 case that the “Court can ‘accord complete relief among existing parties’ in this enforcement action
 10 even in the absence of Hurry [] Fed. R. Civ. P. 19(a)(1)(A)” (see ECF No. 19 at 3). For the same
 11 reasons the SEC has previously explained in full in ECF No. 19, and for the same reasons the Court
 12 previously found, the Motion should again be denied.⁴

13 _____
 14 ² To rebut that presumption, a party must show that an agency’s decision was “so extreme as to
 15 amount to an abdication of its statutory responsibilities.” *Chaney*, 470 U.S. at 833 & n.4. [Mr.]
 16 Doubek cannot make that showing in this SEC enforcement action because the federal securities
 17 laws expressly provide that the decision to bring an enforcement action against a person is entrusted
 18 to the SEC’s “discretion.” 15 U.S.C. § 78u(d)(1); 15 U.S.C. § 77t(b); *accord SEC v. Norstra Energy*
Inc., No. 15cv4751, 2016 WL 4530893, at *1 (S.D.N.Y. Jan. 19, 2016) (holding that the defendant
 failed to satisfy his burden to show an abdication of statutory responsibilities because the Exchange
 Act specifically affords the SEC “discretion”).

19 ³ Federal Rule of Civil Procedure 19(a)(1) provides as follows:

20 (a) PERSONS REQUIRED TO BE JOINED IF FEASIBLE.

21 (1) *Required Party.* A person who is subject to service of process and whose
 joinder will not deprive the court of subject-matter jurisdiction must be joined as a
 party if:

22 (A) in that person’s absence, the court cannot accord complete relief among
 existing parties; or

23 (B) that person claims an interest relating to the subject of the action and is so
 situated that disposing of the action in the person’s absence may:

24 (i) as a practical matter impair or impede the person’s ability to protect
 the interest; or

25 (ii) leave an existing party subject to a substantial risk of incurring
 double, multiple, or otherwise inconsistent obligations because of the
 interest.

26 ⁴ Even if it were not duplicative, the Court could exercise its discretion to deny this belated motion
 to dismiss, which has been filed after the close of discovery. *See Interior Electric Incorporated*
Nevada v. T.W.C. Construction, Inc., No. 2:18-cv-01118-JAD-VCF, 2020 WL 5983882 at *3 (D.
 Nev. Oct. 8, 2020) (holding that “[w]hile affirming that Rule 12(g)(2) bars successive Rule 12(b)(6)

B. If Treated as A Motion for Reconsideration, the Motion Should Still Be Denied.

To the extent that the Court treats the Motion as a motion for reconsideration pursuant to Local Rule 59-1, it also should be denied. As this Court has explained:

A district court may grant a motion for reconsideration only where: (1) it is presented with newly discovered evidence; (2) it has committed clear error or the initial decision was manifestly unjust; or (3) there has been an intervening change in controlling law. *Nunes v. Ashcroft*, 375 F.3d 805, 807 (9th Cir. 2004); *Kona Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000); *Sch. Dist. No. 1J, Multnomah County, Or. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). “A party seeking reconsideration … must state with particularity the points of law or fact that the court has overlooked or misunderstood. Changes in legal or factual circumstances that may entitle the movant to relief also must be stated with particularity.” L.R. 59-1.

Connor v. US, No.2:19-cv-02241-RFB-VCF, 2022 WL 200333347, at *1 (D. Nev. Aug. 18, 2022). Mr. Doubek asserts that the “overwhelming, irrefutable, and consistently corroborated evidence” requires Mr. Hurry to be a defendant in this matter. In support of this argument the Motion points to the following materials that contain allegations or findings regarding Mr. Hurry: (1) FINRA Disciplinary Proceeding No. 2019061232601; (2) Nevada Division of Financial Institutions Decision of July 21, 2023 (the “Nevada Decision”); (3) United States District Court for the District of Utah, Memorandum Decision and Order of March 8, 2024 (the “Utah Decision”); and (4) Hyundai Motor America “Notice of Termination” of April 14, 2022. Motion at 2-3, ¶¶ 1-4.

None of these items constitute newly-discovered facts. The FINRA proceeding referenced has been ongoing for many years and was specifically referenced at the motion to dismiss stage. *See e.g.*, Aug. 15, 2023 Hearing Transcript at 36:22-37:8. The subsequent decision on appeal referenced by Mr. Doubek is not a new fact that affects the previously argued motion. The Nevada Decision predates the hearing on the previous motion to dismiss and thus is not newly discovered evidence. The Utah Decision, which is already over a year

motions, the Ninth Circuit held that district courts have some discretion to consider such a motion if doing so does not prejudice the plaintiff and expedites resolution of the case” and concluding that “[t]hose conditions [were] not satisfied” and thus denying a belated motion to dismiss given prejudice to the plaintiff) (citing *In re Apple iPhone Antitrust Litig.*, 846 F.3d 313, 318 (9th Cir. 2017), *aff’d sub nom* *Apple Inc. v. Pepper*, 138 S.Ct. 2647 (2018)).

1 old, is, as Mr. Doubek admits, related to a “different legal challenge by Alpine” (Mot. at 2, ¶
 2 3). It is not newly discovered evidence that bears on the Motion. The Hyundai Notice of
 3 Termination, a notice of termination by a private party, both predates the prior motion to
 4 dismiss and does not raise any newly-discovered evidence. Finally, even if the facts set forth
 5 in Mr. Doubek’s declaration were to be considered “newly discovered evidence,” they do
 6 not affect the underlying determination of whether Mr. Hurry is required to be joined in this
 7 lawsuit as they do not affect whether the Court can afford complete relief against the
 8 Defendants in this SEC Enforcement action. *See supra* Section A and ECF No. 19.

9 **C. The Time to Amend Pleadings Has Long Since Passed.**

10 Further, the time to amend pleadings in this matter has long since passed. On September 15,
 11 2023, the Court issued its Stipulated Discovery Plan and Scheduling Order (ECF No. 41); *see also*
 12 Fed. R. Civ. P. 15(a). That Order set November 30, 2023 as the Deadline to amend pleadings and
 13 add parties (*id.* at 2, ¶ 4). As that date had passed before the first amendment of the scheduling
 14 orders, that deadline was never amended (*see, e.g.*, ECF No. 63, Order Amending Certain Deadlines
 15 of Stipulated Discovery Plan and Scheduling Order, which did not include the deadline to amend
 16 pleadings or add parties).

17 **D. If Treated as A Motion for Summary Judgment, the Motion Should Also Be
 18 Denied.**

19 Finally, while titled a motion to dismiss, Mr. Doubek also requests that the Court “grant
 20 immediate summary judgment in my favor” (Mot. at 1). To the extent the Motion is considered a
 21 motion for summary judgment, the Motion is untimely and fails to comply with Fed. R. Civ. P. 56
 22 and Local Rule 56-1. The applicable scheduling order required any motions for summary judgment
 23 to be filed no later than October 18, 2024 (ECF No. 86), nearly seven months ago. Further, Mr.
 24 Doubek does not show, nor attempt to show, that there is “there is no genuine dispute as to any
 25 material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. Proc. 56(a). To
 26 the extent the Motion is treated as a motion for summary judgment, the SEC incorporates all
 27 arguments made in the briefing on its motion for summary judgment (ECF Nos. 81, 82 and 95) and
 28

1 in opposition to Defendants' Alpine and Walsh's Partial Motion for Summary Judgment (ECF No.
2 92, 93).

3 **Conclusion**

4 For the foregoing reasons, the Motion should be denied.

5 Respectfully submitted May 21, 2025.

6 SECURITIES AND EXCHANGE COMMISSION
7

8 /s/ Jacqueline M. Moessner _____

9 James P. McDonald
10 Jacqueline M. Moessner
11 Admitted pursuant to LR IA 11-3
12 Securities and Exchange Commission
13 1961 Stout Street, Suite 1700
Denver, Colorado 80294
(303) 844-1000
mcdonaldja@sec.gov
moessnerj@sec.gov

14 *Attorneys for Plaintiff Securities and Exchange Commission*

15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was filed with the Court on May 21, 2025, through the CM/ECF system, which will electronically notify all counsel of record and pro se parties authorized to receive electronic notifications.

/s/Jacqueline M. Moessner
Securities and Exchange Commission